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25 November 2008

George F. Givens, Esq.
Commission Counsel
Environmental Review Commission
North Carolina General Assembly
545 Legislative Office Building
300 North Salisbury Street
Raleigh, NC 27603

Re: Alcoa Response to Stanly County Brief

Dear Mr. Givens:

The brief submitted by Stanly County regarding the Yadkin Study Bill (SB 1046) is filled with legal and factual errors that misrepresent how North Carolina will be affected by the federal relicensing of the Yadkin Hydroelectric Project, owned and operated by Alcoa Power Generating Inc. (APGI). While the Environmental Review Commission can refer to APGI's brief for an accurate representation of the issues, there are several glaring inaccuracies in the County's brief that require a response.

Water Allocation & Quality: North Carolina has the authority to protect its interests

Stanly County is wrong in asserting that the State must take additional action regarding APGI's license application in order to gain control over the waters of the Yadkin River for the next 50 years:

- The State already has and will retain the legal authority to control the consumption and transfer of water in the Yadkin River. *16 U.S.C. § 821.*
- Under the Federal Power Act, hydropower licenses contain explicit provisions that ensure public water systems and municipalities in North Carolina will have the ability to withdraw water from the Yadkin Project reservoirs in accordance with state water plans and laws.
18 CFR § 2.9 (c), Form L-5, 55 F.P.C. 1832 (October 31, 1975).
- The State has the authority to impose conditions on APGI's new federal license through the N.C. Division of Water Quality, which must issue a water quality certificate for the Yadkin Project under Section 401 of the Clean Water Act. *33 U.S.C. § 1341.*

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- Federal hydropower licenses contain numerous provisions that will require continued consultation and coordination with the State of North Carolina regarding the operation of the Yadkin Project. This includes provisions that could require the terms and conditions of APGI's license to be reopened before the license expires. *18 CFR § 2.9 (c), Form L-5, op.cit. See also 18 CFR § 2.23.*

Environmental Issues: State oversight ensures appropriate management of waste sites

Stanly County's brief creates a misimpression that Alcoa's efforts to remediate areas affected by its historical manufacturing operations are somehow inadequate or uncertain. To the contrary, the N.C. Department of Environment and Natural Resources (DENR) is actively overseeing (under the State's Resource Conservation & Recovery Act program) the testing and remediation of areas at, and associated with, the Badin Works plant site to protect the environment and public health.

Alcoa has a permanent legal responsibility to manage waste sites associated with its historical manufacturing operations in Stanly County and the brief is simply wrong in its implications or claims that a sale of the site would somehow change Alcoa's liability or responsibility, that Alcoa has misrepresented the costs of these actions, or that the plant is the primary source of arsenic in Stanly County groundwater.

In addition, Stanly County implies that additional waste sites may exist. However, every one of the many allegations presented by the County has been investigated by Alcoa and/or the State with only one additional site identified beyond previous efforts. In that circumstance, groundwater sampling conducted coincidentally with Stanly County indicated no contamination.

DENR's oversight of the ongoing remediation activities in Stanly County ensures that they will be completed in a timely and appropriate fashion. To imply otherwise is an indictment of state and federal processes and the people who closely regulate the management of all waste materials in North Carolina.

APGI's application for a Section 401 Water Quality Certificate

Stanly County's brief creates a misimpression that the evaluation of APGI's application for a Section 401 water quality certificate is somehow flawed or deficient, or that the County's comments are not being taken into account.

In fact, the N.C. Division of Water Quality (DWQ) has already taken precautionary measures in apparent response to comments submitted by Stanly County. For example, APGI was required to test the quality of water flowing through the Narrows dam as part of its 401 application. The test results, which showed discharges from the dam met all State standards for water quality, will be considered by DWQ during the evaluation of APGI's 401 application.

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When considering these issues, it is important to remember that the State of North Carolina was an active participant in the Yadkin relicensing process for the past six years, through the N.C. Department of Environment and Natural Resources (Division of Water Quality, Division of Water Resources) and the N.C. Wildlife Resources Commission. Through these agencies, the State has been directly involved in negotiations leading to the development of the Relicensing Settlement Agreement and is a signatory to that agreement.

The State's interests have been well represented during the relicensing process and will be protected under the terms of a new license for the Yadkin Project. If you or any members of the ERC have any questions, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles B. Neely, Jr.', with a long horizontal flourish extending to the right.

Charles B. Neely, Jr.

CBN:sch

cc: Bruce Thompson, Esq.